

## REMARKS

This reply is in response to the Final Office Action dated November 18, 2009. Claims 58-62, 64, 65, and 73-85 are pending in the application and stand rejected.

Applicant has amended Figures 2H and 2I to properly identify the tethers 19. No new matter has been added.

Applicant has also amended paragraphs [Para 31], [Para 40], and [Para 42] to provide a reference numeral for the tethers recited in claim 61 and to harmonize the specification with the Figures. No new matter has been added.

Applicant has also amended claims 64 and 65 to correct unintentional antecedent basis informalities and/or matters of form. No new matter has been added.

Entry of the foregoing amendments and reconsideration of the claims in light of the remarks below is respectfully requested.

### **Claim Rejections – 35 U.S.C. § 103**

Claims 58, 59, 62, 64, 65, 73-76, 78-79, 80-82, 85 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown (U.S. Patent No. 3,524,325; hereafter "*Brown*") in view of Ames (U.S. Patent No. 4,075,862; hereafter "*Ames*") or Richmond et al. (U.S. Patent No. 5,582,252; hereafter "*Richmond*") or de Baan (U.S. Patent No. 6,109,830; hereafter "*de Baan*").

Applicant respectfully traverses the rejection on grounds that the Examiner has failed to establish a *prima facie* case of obviousness. The Examiner is kindly reminded that the proposed modification to the prior art cannot render the prior art unsatisfactory for its intended purpose. *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984). If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *See, In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984); MPEP § 2143.01.

Here, the Examiner modifies *Brown* with *Ames*, *Richmond*, or *de Baan*, and asserts that it would have been obvious to modify *Brown* to have a positively buoyant region that creates an

inverse catenary section "in order to traverse an uneven seabed more easily." Final Office Action, p.4. The principal object and intended purpose of *Brown*, however, is a method for connecting piping between two underwater complexes, not traversing an uneven seabed. To accomplish the connection, *Brown* requires that "the flotation means 38 support the flow pipe 32 in a substantially straight line from the first complex 10 to the lay barge 26." Col. 4, ll. 29-32 (emphasis added). *Brown* also teaches a shoe assembly 36 coupled to the flow pipe 32 that is adapted to controllably lower the flow pipe 32 and "maintain the substantially straight line of the flow pipe between the first complex and the lay barge 26." Col. 4, ll. 37-40 (emphasis added); *see also* Abstract, Col. 2, ll. 64-66, and Claim 1. Further, *Brown* states, "Flotation support must be given to the flow pipe 32; otherwise, excessive bending stresses will be encountered in the pipe possibly causing a break or other such failure." Col. 4, ll. 32-35.

Accordingly, employing a buoyant flow pipe 32 that creates an inverse catenary shape, as suggested by the Examiner's modification of *Brown*, would render *Brown* unsatisfactory for its intended purpose by compromising the structural integrity of the pipe 32. Furthermore, if the flow pipe 32 were positively buoyant and formed an inverse catenary shape, the shoe 36 would have considerable difficulty lowering and manipulating the general position of the flow pipe 32 as taught by *Brown*. Instead, because the flow pipe 32 in *Brown* is not positively buoyant, the shoe 36 is able to manipulate the general position of the flow pipe 32 during and after connection, eventually laying it to rest on the seabed. *See, e.g.*, col. 4, ll. 67-75.

Therefore, one of ordinary skill in the art would not have been motivated to modify *Brown* with the positively buoyant, inverse catenary section of *Ames*, *Richmond*, or *de Baan* because such modification would change *Brown's* principal of operation and defeat its intended purpose of making a piping connection between two underwater complexes while maintaining the piping straight. Accordingly, there is no suggestion or motivation to make this proposed modification, and a *prima facie* case of obviousness is not met. *See, e.g.*, MPEP § 2143.01(V). For at least this reason, withdrawal of the rejection and allowance of the claims is respectfully requested.

Notwithstanding the foregoing, the Supreme Court has reiterated that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinnings to support the legal conclusion of

obviousness." *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 417-418 (2007). Under the new PTO rules, it is clear that Examiners must provide an "explicit" reason that supports a conclusion of obviousness and cannot state a finding of obviousness as a mere conclusion without articulating their reasoning. *See*, MPEP § 2142.

As noted above, the Examiner merely asserts that it would have been obvious to modify *Brown* "in order to traverse an uneven seabed more easily." However, *Brown* is not concerned with traversing uneven ground but simply connecting one undersea complex to another using a straight pipe. The Examiner appears to be relying on impermissible hindsight to combine the references, as there is no objective evidence for doing so. Neither the cited prior art nor the present Office Action provides any reason or analysis of what a person of ordinary skill, using common sense, would have done at the time the invention was made. Rather, all that is provided by the Examiner are conclusory statements suggesting the various combinations would have been obvious. For at least this reason, withdrawal of the rejection and allowance of the claims is respectfully requested.

Claims 60, 77, 83 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brown* in view of *Ames* or *Richmond* or *de Baan* as applied to claims 58, 73, 80, and further in view of official notice by the Examiner. Claim 61 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brown* in view of *Ames* or *Richmond* or *de Baan* as applied to claim 58, and further in view of Wittgenstein (U.S. Patent No. 3,173,271). Claim 84 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brown* in view of *Ames* or *Richmond* or *de Baan* as applied to claim 58, and further in view of Welch, Jr. et al. (U.S. Patent No. 3,658,366).

Since claims 60 and 61 depend base claim 58, claim 77 depends from base claim 73, and claims 83 and 84 depend from base claim 80, claims 60, 61, 77, 83, and 84 are allowable for at least the same reasons. Withdrawal of the rejections and allowance of the claims is respectfully requested.

### Conclusion

Having addressed all issues set out in the Office Action, Applicant respectfully submits that the pending claims are now in condition for allowance. Applicant invites the Examiner to telephone the undersigned attorney if there are any issues outstanding which have not been addressed to the Examiner's satisfaction.

If any fees are due with the noted amendments, the Director is hereby authorized to charge any fees associated with this filing to Deposit Account Number 11-0400 in the name of Kellogg Brown & Root LLC.

Respectfully submitted,

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Date

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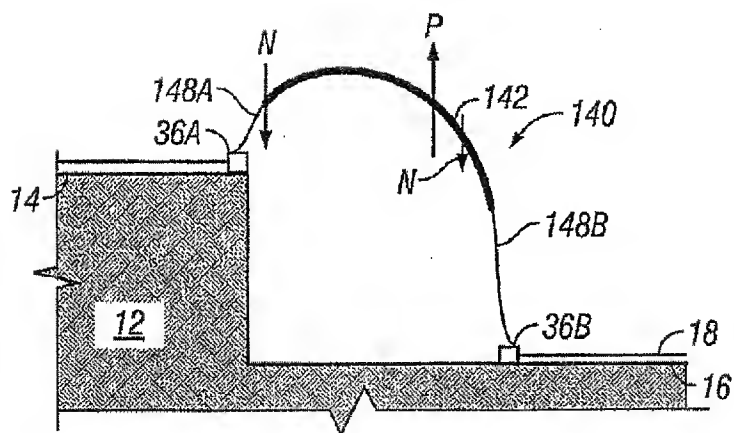


Figure 2G

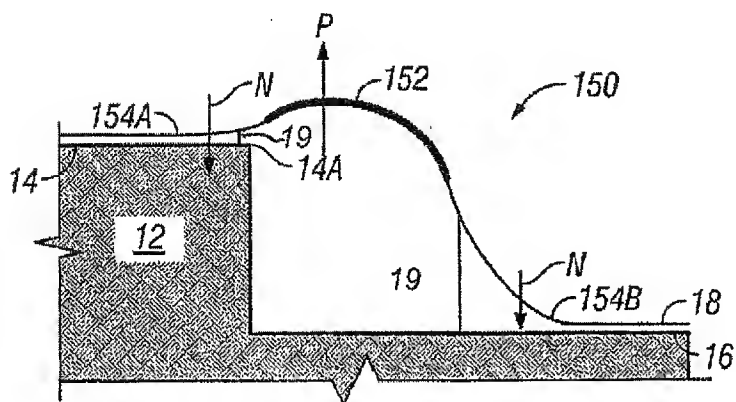


Figure 2H

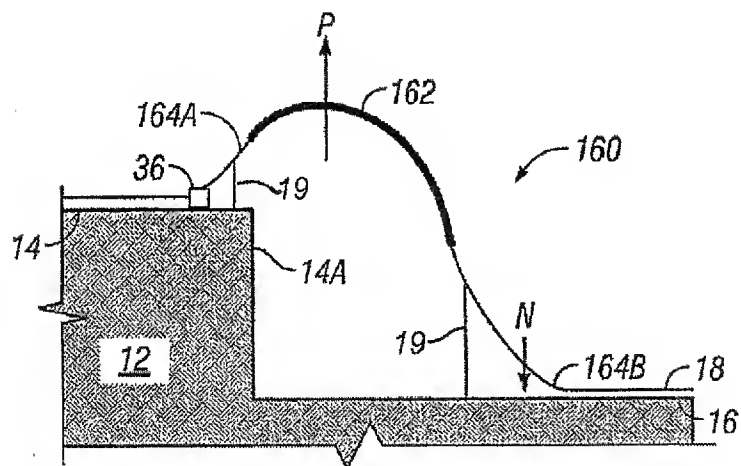


Figure 2I

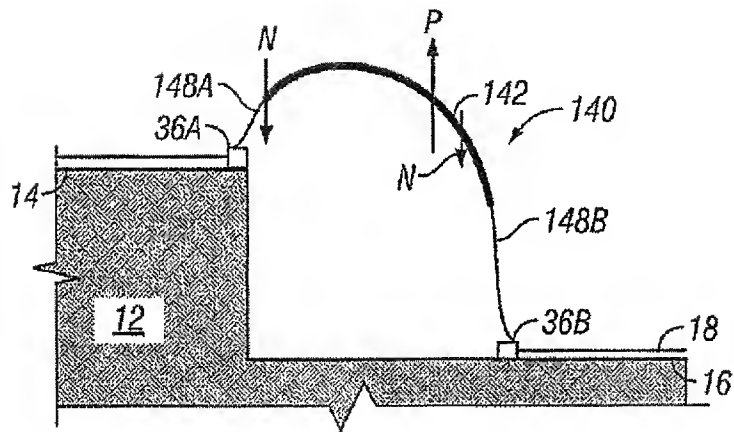


Figure 2G

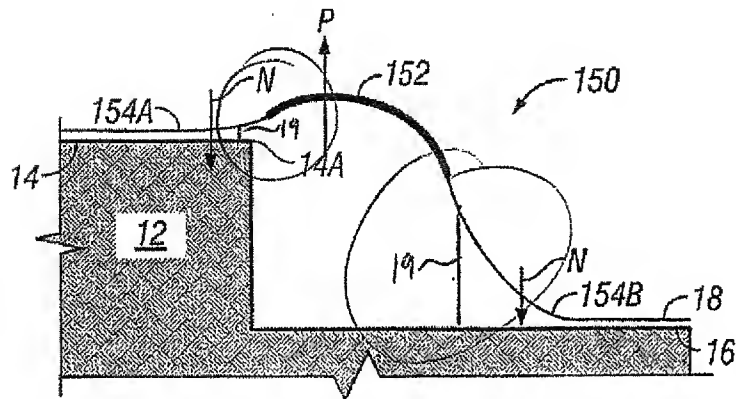


Figure 2H

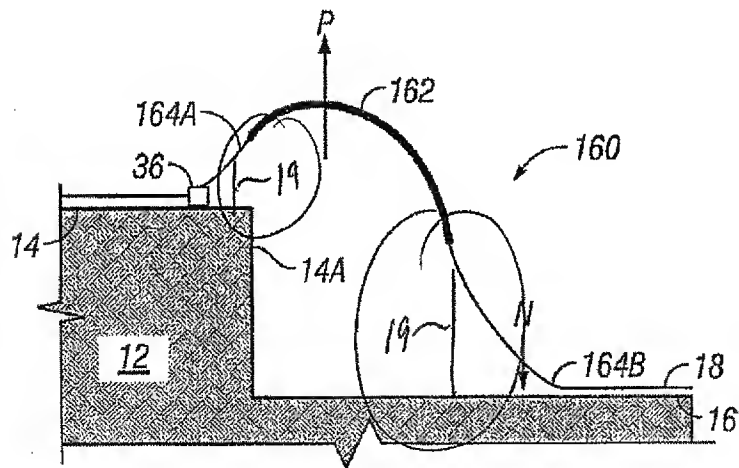


Figure 2I